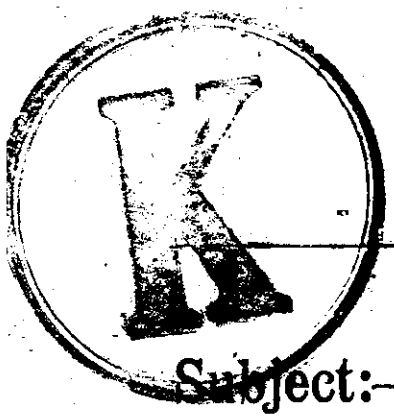
O. Kerosene

1954 **File No.** 6/51 ST

Legal Department

G. **BRANCH**



Subject:— Opinions on the Kerosene

(P.P. 10/F.)

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X

S.I./17.7.56. 4c.

'What method should be adopted for the recovery of the difference of Rs. 25003-3-6, between the sale price and controlled price from the nine merchants of Saberkantha who imported American Kerosene Oil and sold it at a price fixed by the Collector but which was higher than the controlled price.'

S.I./16.7.56. 4e.

Office of the R.L.A.

The view taken by the Collector of Sabarkantha District in his letter at page 251 that the amount cannot be recovered by co-ercive measures as arrears of land revenue is correct as it is not covered by the provisions of section 187 of the Bombay Land Revenue Code, 1879. The only other course left open to Government is to file suits for the recovery of the said amount but such suits are not likely to succeed as the merchants sold at the prices fixed by the Collector, and Government cannot claim the excess amount even though the rate at which the kerosene oil was sold was in excess of the control rate. Even prosecutions of the merchants for breach of the price control orders would end in the offence being treated as technical by the Court.

Id/- P.M.L./10.1.51

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-22, dated the 11th January, 1951.

S.I./14.7.56. 4c.

The view taken by the Civil Supplies Department that neither the State Government nor the District Magistrate can redelegate his power to the Taluka Officers to issue orders for fixing prices of Kerosene under section 3 of the Essential Supplies (Temporary Powers) Act, is correct. There is, however, no objection if the Taluka Officers issue administrative orders regarding prices of kerosene on the basis of formula fixed either by the District Magistrate or the State Government under Statutory Orders.

Id/-

Additional Secretary to Government.

U.R. to C.S.D.'s No. G-/57, dated the 21st April 1951.

S.I./14.7.56. 4c.

The view taken by the Director of Civil Supplies (Fuel) in his note dated the 27th February 1951 on both the points is correct. The offence of breach of clause 6 of the Ratnagiri District Kerosene Oil (Control) Order, 1949, in this case is technical and looking to the circumstances of the case no prosecution is feasible. The amount of Rs. 3326-6-3 is also not legally recoverable.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No.G-168, dated the 26th April 1951.

(page 19)

Office of the R.L.A.

Submitted.

2. Please see the office note of Civil Supplies Department on page 3 ante. the facts of this case are as follows:-

3. The Rationing Officer, Poona requested the District Magistrate of Poona by his letter No. R.T.N./K. 28/197 dt. 7.3.51 to intimate to him whether in case of a firm doing business in kerosene, the name of the person responsible for its management should be inserted in the licence. At present the practice followed in such cases in Poona is that the licences are issued in the name of the Proprietor, Manager, Director, Partner or Partners of the firm. Some of the licences issued before November 1950 have been issued in the names of the firms themselves.

4. The Civil Supplies Department has now at the instance of the District Magistrate of Poona, referred these papers to this office for R.L.A's opinion whether the licences for doing business in kerosene should, in respect of firms, be issued in the names of the persons responsible for their management.

Legal Department.

It appears desireble to hold one manresponsible to carry out the terms and conditions of the licenses. besides it will facilitate the transfer of licenses. It is therefore advisable that licenses are issued in the name of the managing partner of the firm.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No. G-182, dated the 15th May 1951.

S.I./16.7.56. 4c.

Local Department.

The District Magistrate's order No.WAR-1/51 dated the 16th March 1951 fixing the wholesale and retail prices of superior kerosene oil is not applicable to this case as the sales took place on 1st December 1950 and 4th December 1950 i.e. prior to that Order. The order in force which would apply to this case is not in the papers. If the wholesale rate mentioned in the relevant order for Mehsana is Rs. 5-13-6 then there is no case for prosecuting Shri Barot. The District Magistrate has not fixed any statutory price at which the agent should sell kerosene and there is therefore no breach of any statutory Order. On the facts as stated by the District Magistrate, the Mehsana District Kerosene Oil (Regulation of Trade and Movement) Control Order, 1950 also does not appear to have been contravened.

Incidentally, it is pointed out to the Civil Supplies Department that the Mehsana District Kerosene Oil (Regulation of Trade and Movement) Control Order, 1950 and the Order No.WAR-1/51 dated the 16th March 1951 extend to Mehsana District as the said orders have been issued by the District Magistrate, Mehsana in exercise of the powers to issue orders in relation to kerosene oil delegated to him under the Government of India, Ministry of Works, Mines and Powers, Notification No.W.M.P. P.D. 505 (3)/A dated the 19th July 1949 in respect of Mehsana Prant.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No.G-295, dated the 20th July 1951.

S.I./16.7.86. 4c.

The question for consideration is whether the prosecution launched against M/s. Chimanlal & Sons would be successful in view of the fact that no separate prices were fixed under the control orders issued by the District Magistrate, East Khandesh for Savda town and the places near Savda Railway Station and further in view of the fact that in some of the control orders rates were fixed for Savda and the word "Town" was not mentioned.

Regarding kerosene oil :- The District Magistrates in the Bombay State have been empowered to issue orders in relation to kerosene oil within their respectige jurisdiction under the Government of India, Department of Works Mines and Power, Notification No. P110 dated the 3rd March 1947. The District Magistrate, East Khandesh has in exercise of the powers conferred by section 3 of the essential Supplies (Temporary Powers) Act, 1946 read with the above notification, issued orders under his No.MII.L. 177 fixing kerosene prices for the different places in the District on 8th July 1947 (as amended on 13th December 1947), 30th January 1948, 5th February 1948, 21st April 1948, 3rd July 1948, 21st June 1949, 17th November 1949 (as amended on 17th December 1949), 6th April 1950 and 8th August 1950 (as amended on 12th September 1950). Each order has been issued in supersession of the previous order. In all the above orders except those issued on 6th April 1950 and 8th August 1950 (i.e. ex except the last two orders) different wholesale and retail rates f for kerosene have been fixed for (1) Savda and Raver towns and (2) all other places in ex Raver Taluka. The rates fixed for all other places of Raver Taluka are either equal to or one or two pices more than those fixed for Savda and Raver Town M/s. Chimanlal & Sons have all along sold kerosene oil at the rates fixed under the above orders for Savda and Raver towns. If the place near Savda Station is separate from Savda Town, the sales of kerosene oil should have been affected by them at the rates fixed for other

places in Raver Taluka as the place near the Savda Station is at any rate included in Raver Taluka. The rates fixed for other places of Raver Taluka were more than those fix fixed for Savda and Raver Towns. Therefore it would be held by the Court that in charging the rates of Savda and Raver Towns M/s. Chimanlal & Sons have charged less than what they should have legally charged under the above orders (except the last 2 orders). Under the orders dated the 6th April 1950 and 8th August 1950(i.e. the last 2 orders), rates were fixed for Savda and Raver. The word, "towns" was not mentioned in those orders. Consequently, Savda would be held as including the place near Savda Station. If however, it is not so held, the place near Savda Station would be treated as the place where no control was imposed. There being no mention in the orders that the rates were inclusive of transport charges from the station to the town and octroi duty, M/s. Chimalal & Sons were not bound to sell kerosene oil at the control rates minus the transport charges and octroi duty. Thus on the whole the charges against M/s. Chimanlal & Sons that they charged rates higher than the rates fixed by the District Magistrate from time to time would not stand.

A licence (No. R. V. R. K. 3) was granted by the District Magistrate, East Khandesh to M/s. Chimanlal & Sons for dealing in kerosene oil (its copy is not in the papers). It showed Raver Taluka as the place of business, as stated by the District Government Pleader on page 24 ante. Savda Station and place near it are included in Raver Taluka. Therefore M/s. Chimanlal & Sons cannot be said to have done business at a place other than that for which the licence was granted. Therefore this charge against them would also fail.

Regarding Diesel Oil:- The District Magistrates in the Bombay State have been empowered to issue orders in relation to diesel oil within their respective jurisdiction under the Government of India, Department of Works, Mines and Power Notification No. WMP-PD-505 (3) dated the

17th February 1949. The District Magistrate, East East Khandesh in exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 read with the above notification of the Government of India issued an order (No.M.I.L.184) on 29th April 1949 prohibiting a person from dealing in diesel oil without a licence in the form in the schedule appended to the order. Condition 3 of the licence form inter alia provided that all the sales of diesel oil should be made at the price not exceeding those fixed by the District Magistrate, East Khandesh. The District Magistrate, East Khandesh issued orders under his No. M.I.L. 184/P, fixing the minimum retail rates, on 18th August 1949, 18th October 1949, 12th November 1949, 6th January 1950, 6th April 1950, 23rd June 1950 and 13th September 1950. Each order was issued in supersession of the previous order. Under the first three orders maximum retail rates were fixed for Savda town and under the last four orders such rates were fixed for Savda. But looking to the previous notifications and the fact that Savda is mentioned as a 'place' and not 'area' the reference in the latter notification is also to Savda town . No separate rates for the places near Savda station were fixed. Therefore, if the place near Savda Station is held to be separate from Savda Town, M/s. Chimanlal & Sons can rightly contend that there was no control over the prices of diesel Oil at the place near Savda Station. But if the area near station is held to be included in Savda town, M/s. Chimanlal & sons would escape liability for breach of condition 3 of the licence as they sold at the control rates fixed for Savda town. There being no explicit provision in the orders that the rates were inclusive of transport charges and octroi duty, they were not bound to sell diesel oil at the control rates minus transport charges and octroi duty.

Under condition 2 of the licence granted to M/s.Chimanlal & sons they were required to carry on their

business at Savda. As it was not clearly mentioned whether they were to deal in diesel Oil at Savda twon only it would not be possible to hold M/s. Chimanlal & Sons liable for breach of condition 2 of the diesel oil Licence also.

Thus the prosecution against M/s. Chimanlal & Sons is not likely to succeed for the reasons mentioned above.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No.G - 339, dated the 3rd August, 1951.

S.I./16.7.56. 4c.

Office of the R.I.A.

Submitted.

2. Please see the office note of the Civil Supplies Department on pages 37-40 ante. The facts of this case are as follows:-

3. M/s. Alli Mohamed Abdulla who are authorised Kerosene oil agents of M/s. Burmah Shell & Co. at Bodwad (East Khandesh District) for the last 20 years and who have their storage godown for kerosene oil at Nadgaon Station (which is also called Bodwad Station), were granted wholesaler's licence for Bodwad under clause 6 of the East Khandesh District Kerosene Control Order, 1949, by the District Magistrate, East Khandesh on 22.1.49. It was, however, noticed by the Senior Aval Karkun, Bhusaval in September 1950 that M/s. Alli Mohamed Abdulla had been carrying on their business near Bodwad Station and had been charging the consumers, retailers and wholesalers, the rates fixed by the District Magistrate, East Khandesh from time to time for Bodwad town (which were inclusive of the transport charges of Re.0-1-0 per 4 gallons from Nadgaon (Bodwad) station to the Bodwad Town). On being asked by the District Magisyrate, East Khandesh, to explain as to why they charged excess rates at Nadgaon (Bodwad) Station M/s. Alli Mohamed Abdulla Stated thatythey supposed Bodwad Station also to be Bodwad and hence they sold kerosene oil near the station at the rates fixed for Bodwad. As ordered by the District Magistrate, M/s. Alli Mohamed Abdulla immediately opened a shop at Bodwad town. While giving the above facts, the District Magistrate, East Khandesh requested the Director of Civil Supplies (Fuels) Bombay in his letter at page 1 ante that M/s. Alli Mohamad Abdulla should be prosecuted like M/s. Chimanlal & Sons of Sawda (whose case is under submission to the Additional Secretary) for selling kerosene oil near the Railway Station instead of in the town. No distinction had been made in the Notifications, fixing the prices of Kerosene Oil issued by the District Magistrate, East Khandesh during the period f

November 1949 to August 1950, between Bodwad and Bodwad Station and further it had not been specifically stated in the said Notifications that the prices were inclusive of transport charges at the rate of annas one per 4 gallons of kerosene oil. The Director of Civil Supplies, Bombay therefore asked the District Magistrate, East Khandesh whether it was fair to ask M/s. Alli Mohammed Abdulla to deduct the transport charges simply because they did not incur it. The District Magistrate, East Khandesh in reply, stated that though M/s. Alli Mohamed Abdulla had ~~xxxxxxxx~~ profiteered by selling kerosene oil near the Bodwad station at the rates which included transport charges they could not be legally asked not to charge transport charges or any other item of expenditure just because they had not incurred it as no different rates had been fixed by him for Bodwad town and the area near the Bodwad Station. According to the District Magistrate, however, M/s. Alli Mohamed Abdulla could be prosecuted for selling kerosene oil at Bodwad station without a licence in contravention of clause 6 of the East Khandesh District Kerosene Control Order, 1949, as the wholesaler's licence granted to them was for Bodwad and not for Bodwad Station. The Civil Supplies Department has now referred the case to this office for R.L.A's opinion on the point.

(page 36.)

It is not clear from the papers as to what particular place is mentioned against condition 2 of the license. The collr. says that the license was for 'Bodwad' It will be advisable to call for a copy of the licences before deciding this case finally so that the actual place where the licensee was allowed to carry out business can be ascertained.

In the Chimmlal's case referred to by the collr., 'Raver Taluka' is mentioned instead of any town.

Id/-/ 31.7.
D.S.(cr)

S.I./16.7.53. 4c.

Submitted.

2. Please see the offide note of the Civil Supplies Department on pages 127-129 ante.

3. The Gujarati Weekly 'Age Kadam' published from its representative in its issue dt. 11.7.51 a report dt.7.7.51 wherein a reference was made by it to the excess of Re.0-2-6 charged by the Kerosene oil dealers in the prices of kerosene in the villages of Cambay Taluka. The transp lation of the report was sent by the Oriental Translator, Bombay, to the Civil Supplies Department.

4. The C.S.D. asked for the D.M. Kaira's remarks in the matter. The D.M.Kaira stated that though the wholesale merchants of cambay had sold kerosene oil tins to retailers from the Cambay Station godown and had thus not paid orctoi duty of the Municipality or the charges for transport of kerosene from the station to the city, still they had charged the retailers whole sale rates in full which were inclusive of octroi duty and transport charges. In this way the various whole sale merchants of Cambay had, according to the District Magistrate, Kaira, earned a profit of Rs.3738-2-0 during the period from 1-8-48 to 30-6-50.

5. The queston whether the amount of Rs.3738-2-0 could be legally recovered by the Government from the wholesale merchants concerned, was referred by t the District Magistrate, Kaira, to the District Government Pleader, Nadiad, who opined that the amount could be recovered for the reasons

given by him in his No.W.A.R.O/820 dt. 27.7.51. The Civil Supplies Department, however, is doubtful whether the amount can be recovered in view of the fact that the octroi duty and transport charges were included by the District Magistrate, Kaira in his notified rates and they were not shown by him as separate items of expenditure to be charged by the dealer only if they were incurred. Civil supplies Department has therefore forwarded these papers to this office for R.L.A.'s opinion on the point.

S.I./16.7.56. 4c.

Legal Department.

The view taken by the District Government Pleader Nadiad that Government can recover the amount of octroi and transport charges from the Kerosene Agents of Cambay is not correct.

The octroi and transport charges were not shown as separate items in the price notificatins and therefore no action is possible against the kerosene agents or wholesalers since the price charged by them did not exceed the controlled price. Even if they knew that the prices fixed by the District Magistrate were inclusive of octroi and transport charges, there was no legal obligation on them to charge the prices after deducting octroi and transport charges which were not incurred by them. Consequently, it will not be legally feasible for Government to recover this amount from the kerosene agents or wholesalers.

Id/-

Additional Secretary to Government.

U.R. to C.S.'., No.G-558 dated the 13th November 1951.

S.I./16.7.56. 4c.

Office of the R.L.A.

Please see u.or. from C.S.D., -IV-E dt. 28.9.51 on pre-page.

The facts of the case are fully stated in Civil Supplies Department office note, dt. 27-9.51 ante.

Due to the short supply of railway wagon for transport of kerosene oil to the District areas, the District Magistrates were instructed under Civil Supplies Department Circulars, dt. 19.3.49 and 11-4-49 to encourage the agents to transport kerosene by road instead of by rail by allowing the agents to charge at the higher rate on account of higher expenses of transport by road.

In response to the above instructions the Collector of Poona allowed the agents to continue the sale of Kerosene Oil at the Old rates even when the kerosene Oil prices were reduced by Re. 0-2-6. The intention of taking this step was to adjust the extra margin of Re.0-2-6 per tin, against road expenses. This was done during the period from 23-4-49 to 31-8-49. The extra profits so collected were recovered from the agents and a fund termed an "Equalisation Fund was created by the Collector. The agents were given to understand that the extra expenses incurred by them in transporting kerosene oil by road would be provided from the above fund in due course.

In pursuance of the above arrangements the Collector received the claims from the agents who had arranged transport by road.

These claims were subsequently settled by the Collector after due enquiry of the agents concerned. The extra expenditure incurred by them on the transport of kerosene oil by road was then disbursed to those agents who effected the transport by road. While disbursing the amount, the amount that would have been expended had the transport been done by rail and the quantity as certified by the Sole Agents in Bombay as having been actually transported by road by the agent were taken into consideration. One of the agents (Shri R.M.Mavadikar), however, challenged the payment made to him on the ground that the term extra charges also includes, the extra expenditure incurred for soldering, Cooli charges and octroi duty in addition to the transport. The collector is of the view that since the other charges referred to by the agents are considered while fixing the whole sale rates the agent's claim is not justified and he is not entitled to get any other charges other than the actual cost or road transport. The Collector has reported that no other agent has pressed for these charges.

The question for R.L.A's consideration is whether in view of Shri Mavadikar's statement dt.9.4.49 before S.D., Poona ante Shri Mavdikar's claim for soldering, coolly charges and octroi duty in addition to the actual transport charges is maintainable and whether a suit, if filed by him, would be defensible.

S.L./16.7.56. 4c.

Legal Department.

The suit, if filed by Shri Mavadikar, would be defensible.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No.G-560, dated the 13th November, 1951.

S.L. /16.7.56. 4c.